IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 979 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

UNITED INDIA INSURANCE CO LTD

Versus

SHOBHNABEN GIRISHBHAI

Appearance:
MR PV NANAVATI for Petitioner
MR MC BHATT FOR MR JA SHELAT for Respondent No. 1
MR BHARAT B SHAH for Respondent No. 5
Respondent No. 6 SERVED.

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE C.K.BUCH

Date of decision: 24/02/99

ORAL JUDGEMENT [PER; C.K. BUCH, J]

1. The appellant- United India Insurance Company Ltd. - original opponent no.3 has preferred this appeal against the judgment and award dated 31.12.1985 passed by

the MAC Tribunal (Main) at Ahmedabad in MAC Petition No. 76/84. Original applicants are Respondent nos. 1 to 4 and original opponents i.e. driver and owner of the autorickshaw involved in the accident are respondent nos. 5 & 6.

2. According to the original applicants-claimants, deceased Girishbhai was going on a scooter slowly and carefully towards Prakash Stores via Roopali theatre in the city of Ahmedabad on 21.4.1984 at about 2.30 P.M. When he reached " T " Junction, the autorickshaw driven by the respondent no.5 bearing registration No. GRS 3184 and owned by the respondent no.6, came in a careless and negligent manner and while trying to overtake the victim scooterist, knocked him down from behind with great force, as a result of which he sustained serious injuries and was taken to the hospital, where he succumbed to the injuries on the next day. While diciding the claim petition preferred by the heirs and legal representatives of the deceased, the Tribunal awarded compensation of Rs. 1,50,000/ holding all the opponents i.e. driver, owner and Insurance Company liable to pay the said amount jointly and severally. It is against this award that the present appeal is preferred by the appellant Insurance Company.

3. Considering the present settled legal position, the learned counsel appearing for the appellant Insurance Company has confined his arguments only on the defence available to it under Sec.96 of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) contendingthat the liability of the Insurance Company cannot exceed the Statutory limit of Rs.50,000/, applicable in respect of the type of vehicle involved in the accident and the nature of the policy, and he has not pressed any other ground having bearing ono the findings on the point of negligence or the quantum of compensation assessed by the Tribunal.

4. In sum and substance, the question raised is as to whether the Tribunal has committed an error in holding that sec.95(2)(a) of the Act is applicable to the facts of the present case or not. The say of the appellant company is that the learned Tribunal has committed an error in fixing the liability of the Insurance Company at Rs. 1,50,000/ and that it ought to have held that the liability of the Insurance Company was limited to Rs.50,000/ in view of the provisions of Sec.95(2)(b) of the Act. Mr. Nanavati, the learned counsel appearing for the Insurance Company has assailed the reasoning given by the learned Tribunal in para-8 of the judgment that the vehicle namely the autorickshaw involved in the

accident could have been a goods vehicle. Mr. Nanavati referred to the relevant part of the discussion during the course of his submissions and submitted that it was not the say even of the Tribunal that the liability of the appellant against the third party was unlimited.

5. On going through the judgment, we find that two alternative submissions were made before the learned Tribunal. The first submission was that the liability of the Insurance Company qua the third party is unlimited and in the alternative, the liability should be fixed at Rs. 1,50,000/ in view of sec.95(2)(a) of the Act. Mr. Nanavati referred to various decisions in support of his submissions. We however see no need to refer each of them because most of them relate person travelling in a vehicle. Our anxiety was to see as to how the phraseology of sec.95(2)(b) has been interpreted by the Apex Court and the High Courts in similar context. In the case of New India Assurance Co.Ltd. v/s Thakor Bhemaji Ganeshji and others, reported in 1993 ACJ 630, which was referred to by the learned counsel for the appellant, this Court has held that passengers for the purpose of sec. 95(2)(b) of the Act will have to be divided into two categories, namely, (1) passengers carried for hire or reward, and (2) passengers carried otherwise than for hire or reward. The second category of passengers can further be sub-divided into two categories, namely, (1) passengers carried by reason of a contract of employment and (2) passengers carried in [pursuance of a contract of employment. Sub-clause (i) of section[95(2)(b) carves out an exception qua passengers carried for hire or reward. It would mean that passengers carried otherwise than for hire or reward or, in other words, by reason of or in pursuance of a contract of employment, would necessarily fall within the purview of sub-clause (i) of section 95(2)(b) of the Act. The gist of the reasoning given by this Court through Justice Divecha, as he then was, is that in case of" Act Policy", the liability of Insurance Company qua the passengers in the vehicle was limited to Rs. 50,000/. On this aspect our attention is drawn by Mr. MC Bhatt appearing for the claimants, to the decision of the Orissa High Court in the case of National Insurance Company v/s Krushna Chandra Das and others, reported in 1990 ACJ 288, in which the High Court has held that the liability of Insurance Company was not limited to Rs. 50,000/. According to the learned counsel Mr. Nanavati, however, the Orissa High Court, did not refer to the judgment of the Apex Court in the case of British Indian General Insurance Co. Ltd. Bombay v/s Smt. Maya Banerjee and others, reported in AIR 1986 SC 2110. The case before the Apex Court was quite similar to the facts

of the case before us wherein the cyclist was hit by a motor vehicle and had sustained fatal injuries. The Apex Court while dealing with the provisions of sec.95(2) of the Act, has observed " in the face of the provision contained in sec. 95(2) of the Motor Vehicles Act, the liability of the insurer could not be in excess of the statutory limit. We are inclined to agree with the learned counsel for the appellant that the High Court was in error in fixing the liability of the insurer at a sum above Rs. 20,000/." To our mind, para-2 of the judgment is relevant and it reads as under :-

" Counsel for the owner- respondent contended that the liability of the insurer was co-extensive with that of the owner and it was open to the claimant to recover the entire compensation from the insurer and the insurer in its turn could claim recovery of the excess amount above the statutory limit from the insured. Reliance was placed on a judgment of this Court in New India Asiatic Insurance Company Ltd. v/s Pessumal Dhanamal Aswani, (1964)7 SCR : (AIR 1964 SC 1736), in support of this proposition. We have examined the judgment and are inclined to take the view that the facts involved therein were absolutely different. That was a case of comprehensive insurance in respect of a motor car and relying on the terms of the policy the Court held that the liability was not limited by the Statute. Though some parts of the provisions of S.95 of the Act were extracted, yet as no reference to sub-sec.(2) thereof was necessary in view of the ambit of the dispute raised before the Court. Sub-sec.(2) had not even been extracted."

6. According to Mr. Nanavati, the deceased was hit by an autorickshaw and autorickshaw was a passenger vehicle and not a goods vehicle. Even after the amendment of the Act in the year 1982, the liability of the company against the third party had remained the same and had not increased as was done in the case of goods vehicle which is covered under sub-clause (a) of sub-sec.(2) of sec.95 of the Act. Mr. Nanavati has in this regard heavily relied upon the contents of the policy produced by the Insurance Company at exh.29. On going through the policy exh.29, we find therein some important features which show that the autorickshaw involved in the accident was a passenger vehicle and not a goods vehicle. According to the learned counsel Mr. MC Bhatt, vehicle might be used as a passenger vehicle as

well as goods vehicle and the Insurance Company has failed to prove the nature of vehicle involved in the accident. According to Mr. Bhatt, the word "autorickshaw" is not defined in the MV Act and for such passenger vehicle, words "motor cab" is used and defined. However, Mr. Nanavati has convincingly submitted that looking to the nature of the entire scheme of the MV Act and scope to provide wider coverage under sec.95(5), R/w Sec.95(2)(b), it was possible to get a permit to ply goods vehicle as a passenger vehicle on some occassion or in need, but a passenger vehicle can never be plied as a goods vehicle and there is no provision for issuing such permit to a passenger vehicle. On the very first page of the Insurance policy where the number of the policy is printed, the policy is described as " commercial vehicle policy (contract carriage)". The words " contract carriage" used is relevant for our purpose. These words are also used in the schedule part in the column of "limits as to use". It shows that this policy i.e. contract of insurance was made between the company and the insured with regard to a vehicle which was to ply as a contract carriage vehicle. The words "contract carriage" are defined in the Act in sec.2(3) which reads as under :-

"(3) "contract carriage" means a motor vehicle which carries passenger or passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum-

(i) on a time basis whether or not with reference to any route or distance, or;

(ii) from one point to another, and in either case without stopping to pick up or set down along the line of route passengers not included in the contract: includes a motor cab notwithstanding that the passenger may pay separate fees;"

The above definition of "contract carriage" is self- explanatory and without any hesitation, one can infer that it relates to a vehicle which can carry the passenger or passengers may be for hire or reward or under the contract of employment. The learned Counsel Mr. MC Bhatt has submitted that column 6 of the policy which was considered by the Tribunal in a logical way clearly mentions that there was a scope to carry goods in the very vehicle, as, the word "goods" was not struck off by the insurer. According to him the introduction of endorsement no.16 clearly shows that the driver, loader,

cleaner were authorised to travel in the very autorickshaw and, therefore, same could have been used for carrying goods, otherwise, there was no reason to put this endorsement. Looking however to the contract of insurance, it clearly transpires that this endorsement has been made only because additional premium of Rs.8/ was paid to cover the risk of a driver of the contract carriage vehicle. This endorsement gives a wider coverage against the claim, if made by the employeedriver of the vehicle. Column 6 of the policy gives an indication that the licence carrying capacity of the vehicle was of 4 persons. It is not a matter of dispute that so far as third parties are concerned, the policy is an "Act Policy" and basic premium of Rs.48/ has been paid. It is not even the say of the learned counsel appearing for the opponent claimants that any additional premium was paid to give wider coverage against the claim of the third party. There was a scope to have a wider coverage in view of sec. 95(5) of the Act, but in absence of such stipulation, the liability of the insurance company cannot exceed the statutory limit prescribed in sub-sec.(2) of sec.95 of the Act.

7. According to Mr. Bhatt, the Insurance Company has failed to prove satisfactorily that the vehicle involved in the accident was only a passenger vehicle and it is submitted before us that there was no specific pleading by the company nor the permit produced, and therefore, this court should hold that the findings of the Tribunal so far as the nature of the vehicle involved in the accident, is correct. In view of the above discussion, we are not in agreement that in this particular case, it was incumbent on the Insurance Company to produce the permit issued by the RTO authorities. The permits are issued for the vehicle carrying goods and policy exh.29 itself clarifies that the autorickshaw bearing registration No. GRS 3184 involved in the accident was to ply under a contract carriage permit. The non-production of such permit would not go to show that it was a goods vehicle when the policy was clearly described and intended for a "contract carriage". The nature of liability of insurer could easily be determined from the contents of the policy and the type of the vehicle. Therefore, the case of New India Assurance Co. Ltd.V/s Nathiben, reported in 1982(1) GLR 411 will not help the respondents.

8. During the course of arguments, we were taken through the provisions of various types of permits, provisions regarding the nature of vehicles and the types of passengers including the third party who can be the victim of a vehicular accident. We would like to refer to the following observations made in the judgment of the

Apex Court in the case of Motor Owners' Insurance Co.Ltd. v/s Jadavji Keshavji Modi and others, reported in AIR 1981 SC 2059 :-

" If we read words used by the legislature in Clause (a) of Section 95(2) were the sole factor for determining the outside limit of the insurer's liability, it may have been possible to accept the submission that the total liability of the insurer arising out of the incident or occurrence in question cannot exceed Rs. 20,000. Clause (a) qualifies the extent of the insurer's liability by the use of the unambiguous expression "in all" and since that expression was specially introduced by an amendment, it must be allowed its full play. The legislature must be presumed to have intended what it has plainly said. But clause (a) does not stand alone and is not the only provision to be considered for determining the outside limit of the insurer's liability in fact, Clause (a) does not even form a complete sentence and makes no meaning by itself. Like the other Clauses (b) or (d), Clause (a) is governed by the opening words "a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits", that is to say, the limits laid down in Clauses (a) to (d).

9. The learned Counsel Mr. Bhatt has submitted that this being a benevolent legislation, liberal interpretation should be made and the document exh.29 should be interpreted in the same manner in which it has been interpreted by the learned Tribunal.

10. In the judgment in the case of Pushpabai Purshottambhai Udeshi & Ors. v/s M/s Ranjit Ginning & Pressing Co.(P) Ltd. & Anr. reported in (1977)2 SCC 745, the Supreme Court negatived a similar contention that the liability of the insurer is unlimited in the context of a term in the policy which stated that the indemnity was in relation to the legal liability to pay in respect of death of or bodily injury to any person, but except so far as is necessary to meet with the requirements of Sec.95, the insurer should not be liable where such death of or bodily injury to any person arises out of and in the course of the employment of such person by the insured. Even in the policy exh.29, there is a term which limits liability in respect of death of or bodily injury to any person to such amount as is necessary to meet the requirements of the MV Act, 1939 i.e. the provisions of Sec.95.

11. In view of the ratio of the above decision of the Apex Court in Puspabai's case (supra), the contrary submission of the learned counsel Mr. MC Bhatt cannot be accepted. The Tribunal while holding that the liability of the Insurance Company is limited, has held that the case would fall under sub-clause (i) of sub-sec.(2) of sec.95 and not under sub-clause (b) of the Act. According to us, as there is sufficient evidence both oral and documentary to show that the autorickshaw involved in the accident was a passenger vehicle and was plied as a contract carriage vehicle, the finding of the learned Tribunal cannot be sustained. The learned Tribunal ought to have held that the liability of the Insurance Company was limited to Rs. 50,000/ as provided in sub-clause (b) of sub-sec.(2) of Sec.95 of the Act. It is important to note that at the time of fixing the liability of the Insurance Company at Rs. 1,50,000/, the learned Tribunal has not held, as discussed earlier, that the additional premium was paid by the insured and the liability of the Insurance Company was unlimited. The scope of a comprehensive policy has been considered by the Supreme Court in the case of National Insurance Company Ltd. v/s Jugal Kishore, reported in (1988)1 SCC 626, and we would like to refer to the following observations which substantiates the above discussion:

" Even though it is not permissible to use a vehicle unless it is covered at least under an "Act Only" policy it is not obligatory for the owner of a vehicle to get it comprehensively insured. In case, however, it is got comprehensively insured a higher premium than for an "Act Only" policy is payable depending on the estimated value of the vehicle. Such insurance entitles the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the vehicle calculated according to the rules and regulations framed in this behalf. Comprehensive insurance of the vehicle and payment of higher premium on this score, however, do not mean that the limit of the liability with regard to third party risk becomes unlimited or higher than the statutory liability fixed under sub-sec.(2) of Section 95 of the Act. For this purpose a specific agreement has to be arrived at between the owner and the insurance company and separate premium has to be paid on the amount of liability undertaken by the insurance company in this behalf. Likewise, if risk of any other nature, for instance, with

regard to the driver or passengers etc. in excess of statutory liability, if any, is sought to be covered it has to be cleared specified in the policy and separate premium paid therefor. This is the requirement of the Tariff Regulations framed for the purpose." (emphasis supplied).

12. It is amply established that deceased Girish was a person other than a passenger carried for hire or reward or by reason of or in pursuance of a contract of employment. The provisions of sec.95 of the Act deal with the nature and extent of liability arising from the use of motor vehicle for death or injury to any person or damage to the property of a third party and this liability is limited to the extent provided by sub-sec.(2) of sec.95 in respect of the goods vehicle and the vehicles carrying passengers for hire or reward. An owner of a vehicle was obliged to have a policy which can be termed as a statutory policy or "Act Policy " under which specific coverage for every class of persons has to be provided for. As discussed earlier, in absence of proof as to any wider coverage under the policy of insurance nothing more than the statutory limit can be awarded and Insurance Company can be held liable only to that extent. Therefore, the liability imposed on the Insurance Company of Rs. 1,50,000/ is unwarranted and the award will have to be modified by reducing it to Rs. 50,000/.

13. For the reasons aforesaid, the appeal is partly allowed. The impugned judgment and award fixing the liability of the Insurance Company at Rs. 1,50,000/ is modified by reducing it to the statutory liability of Rs. 50,000/. We hope that looking to the socio-economic back ground of poor claimants, the amount of costs and interest, if paid to the claimants, will not be recovered from them by the Insurance Company. The excess amount out of the amount deposited by the Insurance Company in response to the interim orders passed by this Court will be refunded.

14. It is clarified that so far as the liability of the driver and owner to satisfy the award is concerned, the judgment and award passed against them is hereby confirmed. Award is modified accordingly. The Appeal is accordingly partly allowed.Therer will be no order as to costs.

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